

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

THEODUS LINDSEY,

PETITIONER

V.

NO. 4:06CV72-P-D

**MISSISSIPPI STATE PAROLE BOARD,
et al.,**

RESPONDENTS

OPINION

Upon further consideration of the petition and the files and records in this action, the court finds that an order dated May 2, 2006, required petitioner to either submit the \$5.00 filing fee or complete the attached request to proceed *in forma pauperis* within thirty (30) days. Petitioner was warned that his failure to timely comply with the requirements of the order might lead to dismissal of his lawsuit.

Well over thirty days have passed, and Petitioner has not submitted the IFP application that was sent to Petitioner by the court nor has Petitioner submitted the filing fee.

Rule 4l(b), Federal Rules of Civil Procedure, provides, *inter alia*,

For failure of the plaintiff to prosecute or to comply with these Rules or any order of the court defendant may move for dismissal of an action or of any claim against him.

Even though the Rule speaks in terms of dismissal on motion of a defendant, it is now settled that the court has the inherent authority to dismiss *sua sponte* for want of prosecution. *Link v. Wabash Railroad*, 370 U.S. 626 (1962); *Lopez v. Aransas County Independent School District*, 570 F.2d 541, 544 (5th Cir. 1978). Rule 4l(b) further provides, *inter alia*:

Unless the court in its order for dismissal otherwise specifies, dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Since Respondents have never been called upon to answer the petitioner's pleading, and have never appeared in this action, and since the court has never considered the merits of petitioner's claims,

the court's order of dismissal should provide that dismissal is without prejudice. *Shaw v. Estelle*, 542 F.2d 954 (5th Cir. 1976).

A final judgment in accordance with this opinion will be entered.

THIS the 9th day of August, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE